(2)

Supreme Court, U.S.
FILED
APR 26 2004
OFFICE OF THE CLERK

No. 03-1360

IN THE

# Supreme Court of the United States

ADMIRAL INSURANCE COMPANY,

*Petitioner*,

*v.*

CAST STEEL PRODUCTS, INC.,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

## BRIEF IN OPPOSITION

FRANCIS J. CARROLL, JR.
*Counsel of Record*
THOMAS C. SMITH
EUBANK, HASSELL & MOORHEAD
P.O. Box 2229
Daytona Beach, Florida 32114
(386) 238-1357

*Attorneys for Respondent*

187088

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

BEST AVAILABLE COPY

## QUESTION PRESENTED

Whether the Eleventh Circuit erred in its application of the doctrine of *contra proferentem* when interpreting, pursuant to Florida law in a diversity case, the insurance policy issued by the Petitioner to the Respondent?

## STATEMENT PURSUANT TO RULE 29.6

Respondent, Cast Steel Products, Inc., has no parent corporation and no publicly held company owns 10% or more of its stock.

## TABLE OF CONTENTS


| | Page |
|---|---|
| Question Presented | i |
| Statement Pursuant to Rule 29.6 | ii |
| Table of Contents | iii |
| Table of Cited Authorities | iv |
| Statement of the Case | 1 |
| a. Procedural History | 1 |
| b. Facts of Case | 1 |
| Reasons for Denying the Petition | 2 |
| I. This Court Typically Does Not Grant Petitions For Certiorari Which Ask This Court To Solely Review Applications Of State Law By Circuit Courts In Diversity Jurisdiction Cases. | 3 |
| II. This Case Concerns Interpretation Of An Insurance Policy Under Florida Law And Insurance Matters Are Normally Left To The States. | 7 |
| Conclusion | 10 |

## TABLE OF CITED AUTHORITIES

*Page*

**Cases:**

*Cast Steel Products, Inc. v. Admiral Ins. Co.*, 348 F.3d 1298 (11th Cir. 2003) ..... 1-2, 4, 7

*CheckRite, Ltd., Inc. v. Illinois National Ins. Co.*, 95 F. Supp. 2d 180 (S.D.N.Y. 2000) ..... 5

*City of Harrisburg v. Int'l Surplus Lines Ins. Co.*, 96 F. Supp. 954 (M.D. Pa. 1984), *aff'd*, 770 F.2d 1067 (3d Cir. 1985) ..... 5

*Davis v. United States*, 417 U.S. 333 (1974) ..... 7

*Deni Associates of Florida v. State Farm Fire & Cas. Ins. Co.*, 711 So. 2d 1135 (Fla. 1997) ..... 9

*Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938) ..... 3, 4

*Helberg v. Nat'l Union Fire Ins. Co.*, 102 Ohio App.3d 679, 657 N.E.2d 832 (1995) ..... 6, 7

*Lassiter Const. Co., Inc. v. American States Ins. Co.*, 649 So. 2d 768 (Fla. 4th DCA 1997) ..... 9

*Leavitt v. Jane L.*, 518 U.S. 137 (1996) ..... 3

*Matador Petroleum Corp. v. St. Paul Surplus Lines Ins. Co.*, 174 F.3d 653 (5th Cir. 1999) ..... 4, 5

*Cited Authorities*


| | *Page* |
|---|---|
| *Nat. Union Fire Ins. Co. v. Talcott*, 931 F.2d 166 (1st Cir. 1991) | 4, 5 |
| *Nat. Union Fire Ins. Co. of Pittsburgh v. Baker & McKenzie*, 997 F.2d 305 (7th Cir. 1993) | 4, 5 |
| *Pantropic Powers Products, Inc. v. Fireman's Fund Ins. Co.*, 141 F. Supp. 2d 1366 (S.D. Fla. 2001), *aff'd*, 34 Fed. Appx. 968 (11th Cir. 2002) | 6-7 |
| *Stratton & Co., Inc. v. Argonaut Ins. Co.*, 495 S.E. 2d 545 (Ga. App. 1996) | 9 |
| *The Lexington Ins. Co. v. Rugg & Knopp, Inc.*, 165 F.3d 1087 (7th Cir. 1999) | 4, 7 |
| *United States v. A.C. Strip*, 868 F.2d 181 (6th Cir. 1989) | 4 |
| *Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 348 U.S. 310 (1955) | 8, 9 |

*Cited Authorities*

*Page*

**Statutes:**

15 U.S.C. § 1011 (2002) ..... 8

28 U.S.C. § 1291 (2002) ..... 1

28 U.S.C. § 1332 (2000) ..... 1, 4

28 U.S.C. § 1441 (2000) ..... 1, 4

**Rule:**

U.S. Sup. Ct. R. 10 ..... 3

## STATEMENT OF THE CASE

### a. *Procedural History*

Respondent Cast Steel Products, Inc., ("Cast Steel"), takes little exception with the procedural history as set forth by Petitioner, Admiral Insurance Company, ("Admiral"). However, where Admiral indicates that "[t]his proceeding begin as a lawsuit initiated by the respondent," (petition at p. 3), that statement, for sake of accuracy and completeness, should indicate that the proceeding began as a lawsuit initiated by Cast Steel in the State Courts of Florida, and in particular in the Florida Circuit Court in and for the Seventh Judicial Circuit, in and for Volusia County, Florida. The case was then removed by Admiral to the United States District Court for the Middle District of Florida pursuant to 28 U.S.C. § 1441 (2000), premised upon diversity of citizenship under 28 U.S.C. § 1332 (2000).

Admiral also indicates that "[n]otably, however, Cast Steel *did not appeal* from the District's Court's denial of its Motion for Summary Judgment" (petition at p. 3). Technically this is a correct statement, but it should be noted that Cast Steel noticed its appeal to the Eleventh Circuit from a Final Judgment of the United States District Court pursuant to 28 U.S.C. § 1291 (2002).

### b. *Facts of Case*

For purposes of the this petition only, Cast Steel takes no major exceptions to the facts of the case as set forth in Admiral's Petition. Cast Steel would, however, direct this Court's attention to the opinion of the United States Court of Appeals for the Eleventh Circuit in *Cast Steel Products*,

*Inc. v. Admiral Ins. Co.*, 348 F.3d 1298 (11th Cir. 2003), for a complete and comprehensive statement of the facts. The Eleventh Circuit's opinion is also Appendix 1 to Admiral's Petition.

## REASONS FOR DENYING THE PETITION

The decision of the Eleventh Circuit Court of Appeals concerns interpretation of an insurance policy, pursuant to Florida law, in a diversity case. Review of such matters is something this Court has, on previous occasions, refused to do absent 'compelling reasons.' Though important to the Petitioner and Respondent, from the perspective of the Federal Court system this case is a simple garden variety diversity case. Quite simply, to the extent the decision below conflicts with any decisions of other Federal Circuits, it does so only in result, as each opinion was applying the law of different states in diversity cases. No conflict is presented as to application of substantive Federal Law or any Federal Rule of Civil Procedure or Federal Rule of Evidence.

Contrary to Admiral's claims, the decision below does not conflict with a decision of this Court, any Court of Appeals, or any State Court, because none of the opinions Admiral claims conflict with the decision below involved interpretation of the same contract language which the Eleventh Circuit reviewed. Likewise, the facts and circumstances of those cases differed from this case. Simply put, because the cases cited by Admiral did not involve similar facts and similar contract language no conflict is presented. Furthermore, there is no conflict between the decision below and the cases cited by Admiral because in each case the court looked for ambiguities in the contract to determine if application of the time-honored doctrine of

*contra proferentem* was necessary. Therefore, though the results of the cases may have differed, the approach taken by the Courts in the cited opinions was identical to the approach the Eleventh Circuit applied.

Lastly, Cast Steel would note that Admiral's petition seems to invite this Court to enter the arena of creating a Federal Common Law as to interpretation of insurance policies. Long ago, both this Court and the Congress indicated that the business of insurance would be left to the individual states.

## I. This Court Typically Does Not Grant Petitions For Certiorari Which Ask This Court To Solely Review Applications Of State Law By Circuit Courts In Diversity Jurisdiction Cases.

"Review on a writ of certiorari is not a matter of right, but of judicial discretion." Sup. Ct. R. 10. "A petition for a writ of certiorari will be granted only for compelling reasons." *Id.* As to cases in which the Circuit Court has applied state law in a diversity action, this Court has indicated that it does "not normally grant petitions for certiorari, solely to review what purports to be an application of state law" unless the case is an "extraordinary case[s]." *Leavitt v. Jane L.*, 518 U.S. 137, 144-45 (1996). This Court's reluctance to grant petitions for certiorari in diversity cases applying state law pursuant to *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938) is in accord with this Court's "general presumption that courts of appeals correctly decide questions of state law." *Leavitt*, 518 U.S. at 145.

Admiral's petition is from an opinion of the Eleventh Circuit which interpreted an insurance contract pursuant to Florida law. *Cast Steel Products, Inc. v. Admiral Ins. Co.*, 348 F.3d 1298, 1300 (11th Cir. 2003). The Eleventh Circuit, in interpreting the policy of insurance, was simply applying Florida law pursuant to *Erie Railroad*. Admiral, however, contends that the opinion of the Eleventh Circuit "is in Direct Conflict with Every United States Court of Appeals on this Same Important Matter . . ." (Admiral's Petition at p.6) citing opinions of the First Circuit, *Nat. Union Fire Ins. Co. v. Talcott*, 931 F.2d 166 (1st Cir. 1991) the Fifth Circuit, *Matador Petroleum Corp. v. St. Paul Surplus Lines Ins. Co.*, 174 F.3d 653 (5th Cir. 1999), the Sixth Circuit, *United States v. A.C. Strip*, 868 F.2d 181 (6th Cir. 1989), and the Seventh Circuit, *Nat. Union Fire Ins. Co. of Pittsburgh v. Baker & McKenzie*, 997 F.2d 305 (7th Cir. 1993). There are, *inter alia*, two fundamental problems with Admiral's argument, both of which demonstrate why this Court should deny Admiral's Petition.

First, the Eleventh Circuit was, as noted, interpreting the language of a contract, an insurance policy, under Florida law in an appeal from a Final Judgment in a diversity case originally filed in Florida state court and then removed, by Admiral, to the United States District Court for the Middle District of Florida pursuant to 28 U.S.C. § 1441 (2000). The jurisdiction of the Middle District of Florida was based upon 28 U.S.C. § 1332 (2000), thus both the Middle District of Florida and the Eleventh Circuit were applying Florida insurance law, *Erie Railroad*, *supra*, and were, as United States District and Circuit Courts sitting in diversity do, attempting to predict how the Florida Supreme Court would rule on the issues presented. *See The Lexington Ins. Co. v. Rugg & Knopp, Inc.*, 165 F.3d 1087, 1090 (7th Cir. 1999).

The opinions cited by Admiral were likewise diversity cases in which the Circuit and District Courts were applying state law. To the extent the cited opinions conflict with the Eleventh Circuit's opinion – which for reasons discussed below it is contended they do not – Admiral shows this Court nothing more than a divergence in the way various states have interpreted 'claims-made' insurance policies. Admiral presents no conflict amongst the Circuit Courts as to any act of Congress or any Federal Rule of Procedure or Federal Rule of Evidence. Rather, Admiral simply argues that this Court should grant its Petition because the First, Fifth, Sixth, and Seventh Circuits have interpreted insurance contracts under the laws of Massachusetts, Texas, Kentucky, and Illinois different than the Eleventh Circuit has interpreted an insurance policy under Florida law.[1]

As to the second major problem with the Petition, Admiral, in addition to not presenting this Court with a Circuit conflict as to a question of Federal law, has not demonstrated any conflict at all because it has not shown that the other Circuits were interpreting the same contract language that the Eleventh Circuit was presented with, nor, for that matter, were presented with similar factual scenarios. Because the opinion of the Eleventh Circuit concerned simple contract interpretation, and the opinions cited as being in conflict did not involve the same facts and the same contract

1. Specifically, in *Matador Petroleum Corp.*, 174 F.3d at 656 the Fifth Circuit was applying Texas law in interpreting the insurance policy. Likewise, in *Talcott*, 931 F.2d at 167, the First Circuit was applying Massachusetts law, in *Baker & McKenzie*, the Seventh Circuit was applying Illinois law, in *CheckRite, Ltd., Inc. v. Illinois National Ins. Co.*, 95 F. Supp. 2d 180, 188 (S.D.N.Y. 2000), the District Court was applying New York law, 95 F. Supp. 2d at 188, in *City of Harrisburg v. Int'l Surplus Lines Ins. Co.*, 96 F. Supp. 954 (M.D. Pa. 1984), *aff'd*, 770 F.2d 1067 (3d Cir. 1985), the court applied Pennsylvania law, and in *National Union Fire Ins. Co., supra*, Illinois law was applied.

language which the Eleventh Circuit was confronted with there is no conflict among the opinions.

In this regard, it should be noted that Admiral does not even claim a divergence between the cited cases and the decision below as to the manner in which the principles of contract interpretation were applied. In other words, in all of the cases cited by Admiral, the courts reviewed various policies for ambiguities and applied the facts of each case to the contract as interpreted. This is what the Eleventh Circuit did in this case, thus there is no conflict.

Here, the Eleventh Circuit specifically indicated that the facts before it presented a somewhat unique scenario. *Id.* at 1302 n.5 (stating that "[t]his particular scenario has only been addressed by a few other district courts," and noting that in those cases the policy language in the case *sub judice* was not being interpreted"). Likewise, the Eleventh Circuit specifically noted that it found only one case interpreting language similar to that in the policy Admiral issued to Cast Steel, and in that case the court had found the language ambiguous. *Id.* at 1302-03, *citing Helberg v. Nat'l Union Fire Ins. Co.*, 102 Ohio App.3d 679, 657 N.E.2d 832, 833-35 (1995). The Eleventh Circuit then indicated that it found persuasive the reasoning employed by that court in finding the language to be ambiguous, and then proceeded to interpret the Admiral policy by utilizing similar reasoning, *Id.* at 1303, and ultimately concluding the policy language in this case ambiguous. *Id.* In doing so, for the reasons set forth above, it created no Circuit conflict, nor did it commit any error.[2]

2. Admiral argues that the Eleventh Circuit should have utilized the reasoning employed by the Southern District of Florida, and ultimately affirmed by Eleventh Circuit in *Pantropic Powers*

(Cont'd)

## II. This Case Concerns Interpretation Of An Insurance Policy Under Florida Law And Insurance Matters Are Normally Left To The States.

Admiral is essentially asking this Court to affirm what Admiral refers to as "the sanctity and enforceability of a claims-made (insurance) policy." *See Petition* at p. 7. What Admiral is in fact asking this Court to do is to grant its Petition for Writ of Certiorari apparently for purposes of creating a federal common law as to issues of interpretation of insurance policies. As both this Court and Congress have indicated, matters of insurance law should be left to the states.

---

(Cont'd)

*Products, Inc. v. Fireman's Fund Ins. Co.*, 141 F. Supp. 2d 1366 (S.D. Fla. 2001), *aff'd*, 34 Fed. Appx. 968 (11th Cir. 2002), and not that employed by the Ohio state appellate court in *Helberg*, *supra*, implying that the Eleventh Circuit erred in doing so. The *Pantropic Powers Products*, court found *Helberg* distinguishable, 141 F. Supp. 2d at 1371 n.13 ("The Court expresses no opinion as to whether the Florida courts would adopt the holding of this Ohio appellate decision"), and the Eleventh Circuit found *Helberg* persuasive and *Pantropic Powers Products*, distinguishable, *Cast Steel*, 348 F.3d at 1303-04. There was no error in this. As to Federal Courts sitting in diversity, "[w]here the state supreme court has not ruled on an issue, decisions of the state appellate courts control, unless there are persuasive indications that the state supreme court would decide the issue differently." *The Lexington Ins. Co.*, 165 F.3d at 1090. In the absence of controlling state law on a particular issue, a Federal Court sitting in diversity "may consider decisions from other jurisdictions." *Id.* Thus, in looking to the opinion in *Helberg* the Eleventh Circuit did not err. To the extent which, as Admiral argues, it erred in not applying *Pantropic Powers*, – which Cast Steel contends it did not– then that would at most present an intra-circuit conflict, something which this Court has indicated is not cause for granting a petition for a writ of certiorari. *See generally Davis v. United States*, 417 U.S. 333, 340 (1974).

*See Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 348 U.S. 310, 319 (1955); 15 U.S.C. § 1011 (2002). In *Wilburn Boat*, this Court held that state law concerning breaches of warranties would apply in maritime insurance policies despite such contracts being maritime contracts which traditionally have been governed by Federal Law, 348 U.S. at 316. In so holding this Court noted that:

> [t]he hearings on the McCarran Act reveal the complexities and difficulties of an attempt to unify insurance law on a nationwide basis, even by Congress. Courts would find such a task far more difficult. Congress in passing laws is not limited to the narrow factual situation of a particular controversy as courts are in deciding lawsuits.

*Id.* at 319. As this Court later expressed in that opinion:

> Under our present system of diverse state regulations, which is as old as the Union, the insurance business has become one of the great enterprises of the Nation. Congress has been exceedingly cautious about disturbing this system, even as to marine insurance where congressional power is undoubted. We, like Congress, leave the regulation of marine insurance where it has been – with the States.

*Id.* at 320-21 (internal citations omitted).

If this Court were to grant Admiral's Petition it would effectively be reviewing whether there is a conflict between Florida insurance law, Massachusetts insurance law, Illinois insurance law, and Texas insurance law as to interpretation

of the language contained in insurance policies. This is something this Court long ago indicated it would not become involved in. *Id.* Again, however, there is no conflict amongst the opinions cited by Admiral as to how the Courts approach interpretation of insurance contracts. All of the cases cited by Admiral involved a review of an insurance policy for any ambiguities and, when an ambiguity existed, the application by the Court of the time-honored doctrine of *contra proferentem*. That is exactly what the Eleventh Circuit did in the decision below.

As well, Admiral's argument that a conflict exists ignores the fact that states often vary as to key issues of insurance law. *See generally Deni Associates of Florida v. State Farm Fire & Cas. Ins. Co.*, 711 So. 2d 1135, 1140 (Fla. 1997), (noting that Florida's non-recognition of the doctrine of reasonable expectations in interpreting insurance contracts differs from the laws of some of the other states which do recognize that doctrine); Compare *Lassiter Const. Co., Inc. v. American States Ins. Co.*, 649 So. 2d 768, 770 (Fla. 4th DCA 1997) (noting differing interpretations by various states of certain language in commercial general liability insurance policies) *Stratton & Co., Inc. v. Argonaut Ins. Co.*, 495 S.E. 2d 545, 547 (Ga. App. 1996) (same).

What the limited examples in the previous paragraph show is that the laws of the fifty states often differ in regards to issues of insurance law. This is nothing new and Admiral makes no argument as to why, as a matter of public policy, this long-standing tradition should be varied from. In summary, Admiral has not shown any 'compelling reason' why this Court should venture from the long-standing view held by both this Court and Congress that the business of insurance is to be left to the states.

## CONCLUSION

For the foregoing reasons the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

FRANCIS J. CARROLL, JR.
*Counsel of Record*
THOMAS C. SMITH
EUBANK, HASSELL & MOORHEAD
P.O. Box 2229
Daytona Beach, Florida 32114
(386) 238-1357

*Attorneys for Respondent*